



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0729]

RIN 1625-AA00

Safety Zone; Superior Bay, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing a portion of the Duluth Harbor Basin, Northern Section, including the Duluth Entry. This safety zone is intended to help protect participants, event safety personnel, boaters and spectators during the Superior Man Triathlon.

DATES: This rule is effective from 6:00 a.m. to 08:30 a.m. on August 26, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0729]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey

Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Judson A Coleman, Marine Safety Unit Duluth U.S. Coast Guard; telephone (218) 720-5286 ext 111, e-mail Judson.A.Coleman@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this

event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect participants, spectators, and vessels from the hazards associated with the Superior Man Triathlon, which are discussed further below..

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

On August 26, 2012, the inaugural Superior Man Triathlon will occur along the Bay of Lake Superior. The 1.2 mile swim leg of the triathlon will travel from the Vista Fleet to the Bayfront Festival Park. The Captain of the Port Duluth has determined that the swim leg of the triathlon poses a danger to the boating public. Thus, pursuant to the authority in 33 U.S.C. 1231 and 33 CFR 1.05-1(f), the Captain of the Port Duluth is establishing a temporary safety zone to protect participants, event safety personnel, boaters, and spectators during the Superior Man Triathlon.

C. Discussion of the Final Rule

For the reasons stated in the preceding paragraph, the Captain of the Port is establishing a temporary safety zone. This temporary safety zone will encompass all waters of Superior Bay, including the Duluth Entry encompassed in an imaginary line beginning at point 46 46'36.1236"N 092 06'06.987"W, running southeast to 46 46'32.7534"N 092 06'01.7382"W, running northeast to 46 46'45.9228"N 092 05'45.1818"W, running northwest to 46 46'49.4718"N 092 05'49.349"W and finally running southwest to the original point.

This safety zone will be in effect and enforced on August 26, 2012 from 6:00 a.m. to 8:30 a.m.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety is not a significant regulatory

action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small, will be enforced for only two and a half hours, and is expected to have no impact on commercial vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Duluth Harbor Basin, Northern Section from 6:00 a.m. to 8:30 a.m. on August 26, 2012.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone will be in effect, and thus subject to enforcement, for only two and a half hours early in the day. Vessel traffic may be allowed to pass through the zone with the permission of the Captain of the Port. Before the

enforcement of the zone, the Coast Guard intends on issuing local Broadcast Notice to Mariners so that mariners can plan accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone, and, therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping, Security measure, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland

Security Delegation No. 0170.1.

2. Add § 165.T09-0729 to read as follows:

§ 165.T09-0729 Safety Zone; Superior Bay, Duluth, MN

(a) Location. The following area is a temporary safety zone:
All waters of the Duluth Harbor Basin, Northern Section,
including the Duluth Entry encompassed in an imaginary line
beginning at point 46 46'36.1236"N 092 06'06.987"W, running
southeast to 46 46'32.7534"N 092 06'01.7382"W, running northeast
to 46 46'45.9228"N 092 05'45.1818"W, running northwest to 46
46'49.4718"N 092 05'49.349"W and finally running southwest to the
original point.

(b) Effective and Enforcement Period. This rule will be
effective and enforced from 6:00 a.m. to 8:30 a.m. on August 26,
2012.

(c) Regulations. (1) In accordance with the general
regulations in § 165.23, entry into, transiting or anchoring
within this safety zone is prohibited unless authorized by the
Captain of the Port, Marine Safety Unit Duluth, or his designated
representative.

(2) This safety zone is closed to all vessel traffic, except
as may be permitted by the Captain of the Port, Marine Safety
Unit Duluth or his designated representative.

(3) The "on-scene representative" of the Captain of the Port
is any Coast Guard commissioned, warrant or petty officer who has

been designated by the Captain of the Port to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard auxiliary vessel. The Captain of the Port representative may be contacted via VHF channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative to request permission to do so. Vessel operators must comply with all directions given to them by the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative.

Dated: July 27, 2012

K. R. Bryan

Commander, U.S. Coast Guard

Captain of the Port Marine Safety Unit Duluth

[FR Doc. 2012-20004 Filed 08/14/2012 at 8:45 am; Publication

Date: 08/15/2012]